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Nos. 99-224 and 99-582

In the Supreme Court of the United States

CHARLES B. MILLER, ET AL., PETITIONERS

v.

RICHARD A. FRENCH, ET AL.

UNITED STATES OF AMERICA, PETITIONER

v.

RICHARD A. FRENCH, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

Under the automatic stay provision of the Prison Litigation Reform Act of 1995, 18 U.S.C. 3626(e) (Supp. III 1997), the filing of a motion to terminate prospective relief shall operate as a stay during the period beginning 30 days after the filing of the motion and ending on the date the court rules on the motion. A court may postpone the effective date of the automatic stay for not more than 60 days for good cause, and any order staying, suspending, delaying, or barring the operation of the automatic stay (other than a postponement for not more than 60 days) is appealable under 28 U.S.C. 1292(a)(1). The questions presented are:

1. Whether a district court has authority to suspend the automatic stay and thereby preserve the status quo under traditional equitable standards.

2. Whether the automatic stay provision violates constitutional separation-of-powers principles.

PARTIES TO THE PROCEEDING

The petitioner in No. 99-582 is the United States. The petitioners in No. 99-224 are Charles B. Miller, Superintendent of the Pendleton Correctional Facility, Edward I. Cohn, Commissioner, Indiana Department of Correction, and Herbert Newkirk, Regional Director, Indiana Department of Correction. The respondents are Richard A. French, Morris E. Dozier, Martin W. Bradberry, and Henry C. Jennings.

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BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-23a)[1] is reported at 178 F.3d 437.

JURISDICTION

The judgment of the court of appeals was entered on May 6, 1999. On July 29, 1999, Justice Stevens extended the time for filing a petition for a writ of

[1] Pet. App. refers to the appendix to the petition in No. 99-582.

certiorari to and including September 3, 1999, and on August 23, 1999, Justice Stevens extended the time for filing a petition to and including October 3, 1999. The petition for a writ of certiorari in No. 99-582 was filed on October 4, 1999 (a Monday), and was granted on December 6, 1999. The petition in No. 99-224 was granted on the same day. This Court has jurisdiction under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are reproduced in an appendix to the petition in No. 99-582. Pet. App. 40a-42a.

STATEMENT

1. In 1996, Congress enacted the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, Tit. VIII, § § 801-810, 110 Stat. 1321-66 to 1321-77. The PLRA sets forth standards for the entry and termination of prospective relief in civil actions challenging conditions at prison facilities. Under the PLRA, prospective relief in prison conditions cases "shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." 18 U.S.C. 3626(a)(1)(A) (Supp. III 1997).

The PLRA provides for the "immediate termination" of relief that does not conform to that standard. 18 U.S.C. 3626(b)(2) (Supp. III 1997). It specifies that "[i]n any civil action with respect to prison conditions, a defendant or intervenor shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal

right." 18 U.S.C. 3626(b)(2) (Supp. III 1997). That statutory mandate is subject to an important qualification. "Prospective relief shall not be terminated if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation." 18 U.S.C. 3626(b)(3) (Supp. III 1997). A party may seek immediate termination even if the relief "was originally granted or approved before * * * the date of the [PLRA's enactment]." 18 U.S.C. 3626 note (Supp. III 1997).

In addition to permitting a party to move for the immediate termination of decrees that were entered without the necessary findings, the PLRA also permits a party to move periodically for termination of any prison conditions decree, including a decree entered *with* the necessary findings. 18 U.S.C. 3626(b)(1) (Supp. III 1997). A party may seek termination two years after the entry of relief, one year after a denial of a motion to terminate, and, in the case of pre-PLRA decrees, two years after the date of the PLRA's enactment. *Ibid.* In April 1998, all pre-PLRA decrees became subject to periodic motions for termination. Motions that are based on the passage of time are subject to the same important limitation as motions that are based on the absence of necessary findings. The relief may not be terminated if the court finds that it remains necessary to correct a current and ongoing violation, and that it is narrowly drawn and the least intrusive means to correct the violation. 18 U.S.C. 3626(b)(3) (Supp. III 1997).

The PLRA establishes special procedures that govern motions for termination. A court is required to "promptly rule" on such a motion. 18 U.S.C. 3626(e)(1) (Supp. III 1997). When a court fails to issue a prompt ruling, mandamus "shall lie" as a remedy. *Ibid.* In addition, under the automatic stay provision, at issue here, the filing of a motion for termination "shall operate as a stay during the period * * * beginning on the 30th day after such motion is filed * * * and * * * ending on the date the court enters a final order ruling on the motion." 18 U.S.C. 3626(e)(2) (Supp. III 1997). A court may "postpone the effective date of an automatic stay * * * for not more than 60 days for good cause," but no postponement is permissible "because of general congestion of the court's calendar." 18 U.S.C. 3626(e)(3) (Supp. III 1997). Any order "staying, suspending, delaying, or barring the operation of the automatic stay" (other than an order postponing the automatic stay under the 60-day postponement provision) is subject to appellate review. Such an order "shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28." 18 U.S.C. 3626(e)(4) (Supp. III 1997).[2]

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[2] As originally enacted, the automatic stay provision specified that "[a]ny prospective relief subject to a pending motion shall be automatically stayed," beginning on the 30th day after the filing of a motion for termination and ending on the date the court rules on the motion. § 802, 110 Stat. 1321-68. The 1997 Amendments to the PLRA revised the automatic stay provision to its current form. The 1997 amendments also added: (1) the provision authorizing mandamus when a court fails to rule promptly on a motion for termination, 18 U.S.C. 3626(e)(1) (Supp. III 1997); (2) the provision authorizing a court to postpone the automatic stay for 60 days for good cause, 18 U.S.C. 3626(e)(3) (Supp. III 1997); and (3) the provision authorizing an appeal from an order suspending the automatic stay. 18 U.S.C. 3626(e)(4) (Supp. III 1997). See H.R. Conf. Rep. No. 405, 105th Cong., 1st Sess. 132-133 (1997); 143 Cong. Rec. S12,269 (daily ed., Nov. 9, 1997) (remarks of Sen. Abraham). Congress specified that the 1997 amendments "shall take effect upon the date of the enactment of this Act and shall apply to pending cases." 18 U.S.C. 3626 note (Supp. III 1997).

2. In 1975, a class of inmates at the Pendleton Correctional Facility (respondents), filed suit against several Indiana prison officials (the State), alleging that the conditions at the facility violated state and federal law. After a trial, the district court found violations of state and federal law and entered a remedial order designed to correct those violations. *French* v. *Owens*, 538 F. Supp. 910 (S.D. Ind. 1982). While an appeal from that judgment was pending, this Court held in *Pennhurst State School and Hospital* v. *Halderman*, 465 U.S. 89 (1984), that the Eleventh Amendment deprives federal courts of jurisdiction to issue prospective relief against state officers based on state law. The Seventh Circuit remanded the case to the district court for reconsideration in light of *Pennhurst*.

On remand, the district court found that most of the state law violations also violated federal law. J.A. 27-42. The district court also issued an amended remedial order that took into account improvements that had been made at the facility. J.A. 21-26. The Seventh Circuit affirmed in part and vacated in part. *French* v. *Owens*, 777 F.2d 1250 (1985). It upheld the provisions of the district court's order addressing extreme overcrowding, double celling, improper use of mechanical restraints, inadequate medical care, unsanitary kitchen services, and insufficient staffing; it vacated the provisions addressing exercise and recreation, fire and safety, and protective custody. *Id.* at 1258. The parties

resolved the remaining issues through joint stipulations. J.A. 45-47.

3. In 1997, the State filed a motion under the PLRA for termination of the district court's remedial orders. J.A. 49-51. The State argued that it was entitled to termination of those orders because they did not contain any finding that the relief is narrowly drawn, extends no further than necessary to correct the violation of respondents' constitutional rights, and is the least intrusive means to correct those constitutional violations. J.A. 46. The State's motion did not address whether the relief in the decree remained necessary to remedy a violation of federal law. J.A. 45-47.

Respondents filed a motion for a preliminary injunction to suspend the operation of the automatic stay and thereby maintain the status quo. J.A. 49-51. Finding that the automatic stay provision "is clearly unconstitutional," that respondents "were likely to succeed on the merits" of their challenge to the automatic stay, and that the State "would not be harmed by the entry of [a] preliminary injunction," the district court granted respondents' motion. Pet. App. 36a-37a. The court ordered that "there shall be no stay of prospective relief in this matter and the parties shall continue to comply with this Court's prior orders and judgments until further order of the Court." *Id.* at 37a.

The State appealed the order suspending the automatic stay, and the United States intervened in the appeal, pursuant to 28 U.S.C. 2403(a), to defend the constitutionality of the automatic stay provision. The United States argued that the automatic stay provision does not deprive a court of authority to suspend the automatic stay and thereby preserve the status quo in accordance with traditional equitable standards and that, when so construed, the automatic stay provision

does not violate constitutional separation-of-powers principles.

4. The court of appeals affirmed the district court's order. Pet. App. 1a-23a. The court of appeals interpreted the automatic stay as a legislative command that a stay of prospective relief occur no later than 90 days after the filing of a motion for termination. *Id.* at 9a-12a. The court expressly rejected the view of the United States and of the Sixth Circuit in *Hadix* v. *Johnson*, 144 F.3d 925 (1998), that a court has authority to suspend the automatic stay and thereby preserve the status quo in accordance with traditional equitable standards. Pet. App. 9a-13a. The court noted that the statutory text refers to the stay as "automatic," provides that the filing of a motion for termination "shall" operate as a stay, and "specifie[s] not only a clear starting point, but also the ending point for the stay." *Id.* at 12a. The court concluded that "[e]ven though we do not lightly assume that Congress meant to restrict the equitable powers of the federal courts, we find it impossible to read this language as doing anything less than that." *Ibid.*

The court then ruled that the automatic stay provision "violates the separation of powers principle because it is a direct legislative suspension of a court order." Pet. App. 18a-19a. The court noted that in *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 218-219 (1995), this Court stated that Article III "gives the Federal Judiciary the power, not merely to rule on cases, but to decide them, subject to review only by superior courts in the Article III hierarchy." Pet. App. 19a (emphasis omitted). The court of appeals concluded that the automatic stay provision violates that principle because it "places the power to review judicial decisions outside of the judiciary: it is a self-executing legislative

determination that a specific decree of a federal court * * * must be set aside at least for a period of time, no matter what the equities, no matter what the urgency of keeping it in place." *Ibid.*

The court of appeals also concluded that the automatic stay provision violates the separation-of-powers principle established in *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1871). Pet. App. 19a-20a. The court characterized *Klein* as holding that "Congress does not have the power to impose a rule of decision for pending judicial cases, apart from its power to change the underlying applicable law." *Id.* at 20a. The court concluded that the automatic stay provision "falls comfortably within the rule of *Klein*," because it mandates that prospective relief must be terminated during the pendency of the case. *Ibid.*

A majority of the judges in regular active service did not vote to hear the case en banc. Pet. App. 23a n.3. Judge Easterbrook (joined by Chief Judge Posner and Judge Manion) dissented from the denial of rehearing en banc. *Id.* at 23a-35a. The dissenters agreed with the panel that a district court does not have authority to suspend the automatic stay and thereby preserve the status quo under traditional equitable standards. *Id.* at 23a. The dissenters concluded, however, that the automatic stay provision, as so construed, does not violate separation-of-powers principles.

The dissenters disagreed with the panel's conclusion that the automatic stay provision unconstitutionally interferes with a court's ability to adjudicate a case. Pet. App. 26a-30a. In their view, the automatic stay provision simply "goads" courts to rule promptly on the merits of a motion for termination, *id.* at 28a, and the Constitution does not give courts an immunity from deadlines, *id.* at 28a-29a. The dissenters also disagreed

with the majority's conclusion that the automatic stay provision violates the rule in *Klein*. They reasoned that the automatic stay provision does not mandate a rule of decision without a change in the underlying law, but simply stays prospective relief until the court determines whether that relief complies with the new standard set forth in the termination provision. *Id.* at 30a-31a. The dissenters asserted that the panel's decision threatens the constitutionality of the automatic stay in bankruptcy, 11 U.S.C. 362(a)(2), Federal Rule of Civil Procedure 65(b)'s 10-day limit on temporary restraining orders, the Speedy Trial Act's requirement that an indictment must be dismissed if the case is not tried within the time limits set forth in the Act, 18 U.S.C. 3161, 3162(a)(2), and other federal statutes that set deadlines for judicial action. Pet. App. 31a-35a.

SUMMARY OF ARGUMENT

Federal courts have always enjoyed the power to issue equitable relief to preserve the status quo pending the resolution of a case that is before them. The automatic stay provision's requirement that a motion for termination "shall operate as a stay," within 30 days of its filing, 18 U.S.C. 3626(e)(2) (Supp. III 1997), does not displace that traditional equitable authority. Particularly when read against the background principle that federal courts retain traditional equitable authority absent the clearest congressional command to the contrary, the automatic stay provision simply describes what will occur in the absence of judicial intervention. Thus, if the statutory period passes and the court does not intervene, a stay of the judgment automatically occurs. But the text of the automatic stay provision does not purport to limit the authority of a court to exercise its historic authority to preserve the status

quo when a termination motion cannot be resolved before the automatic stay takes effect and the traditional prerequisites for the issuance of equitable relief—irreparable injury and probability of success—have been satisfied.

That construction of the automatic stay provision is consistent with Congress's decision to limit good cause postponements to 60 days. Any factor affecting a court's ability to resolve the case within 30 days, other than general docket congestion, can justify a 60-day postponement. Congress's unwillingness to permit a postponement of the automatic stay under that generous good cause standard for more than 60 days does not imply that Congress intended to foreclose a court from suspending the automatic stay for a longer period of time when justified under the far more demanding standards for obtaining equitable relief.

The provision for appellate review of orders suspending the automatic stay further supports that conclusion. That provision manifests Congress's understanding that courts would have authority to issue a suspension order to preserve the status quo in an appropriate case, and gives prison officials a right to appellate review of such an order under the traditional abuse of discretion standard.

Interpreting the automatic stay to preserve a court's traditional authority to preserve the status quo is also consistent with Congress's purpose of preventing premature termination of relief that is necessary to remedy a violation of the Constitution. Because Congress's termination standard requires a court to assess the current conditions of institutions that it may not have examined for years, it will not always be possible for the court to resolve the merits of a termination motion before the automatic stay takes effect. In those

cases, when the parties opposing termination can show that they will suffer irreparable harm if the automatic stay goes into effect, and that they are likely to prevail on the termination motion, an order preserving the status quo helps to fulfill Congress's overall purposes.

Finally, interpreting the automatic stay to preserve a court's authority to maintain the status quo is supported by the principle that a statute should be interpreted to avoid a serious constitutional question if such a construction is possible. Under *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), Congress may not through retroactive legislation reopen a final judgment that is no longer subject to appeal, and under *Hayburn's Case*, 2 U.S. (2 Dall.) 409 (1792), Congress may not directly suspend a court decision. If construed to foreclose equitable relief, the automatic stay provision would raise a serious Article III question under those decisions, because in cases in which there is insufficient time for a court to resolve the termination motion before the automatic stay takes effect, the automatic stay provision would legislatively effect the suspension of a final judgment without affording a court any role in the suspension decision. And it would do so even though the relief in the judgment may be necessary to remedy a violation of federal law. In contrast, if the automatic stay is interpreted to preserve a court's authority to maintain the status quo, a court would retain control over whether its judgment should be suspended, and the constitutional question would be avoided.

Although the question is a close one, we believe that, in light of Congress's broad power to affect prospective relief, its general authority to control the exercise of a court's equitable discretion, and the 90-day window for resolving the merits of a termination motion, a statute

that foreclosed equitable relief would still be constitutional. But because the statute does not clearly deprive courts of their traditional equitable powers, and because construing it to do so would raise a serious constitutional question, that construction should not be adopted.

ARGUMENT

THE AUTOMATIC STAY PROVISION DOES NOT DISPLACE A COURT'S AUTHORITY TO PRESERVE THE STATUS QUO UNDER TRADITIONAL EQUITABLE STANDARDS AND DOES NOT VIOLATE CONSTITUTIONAL SEPARATION-OF-POWERS PRINCIPLES

The "automatic" stay provision of the PLRA specifies that, after 30 days (with a possible extension to 90 days upon a showing of good cause), a motion to terminate prospective relief "shall operate as a stay." 18 U.S.C. 3626(e)(2) (Supp. III 1997). The court of appeals interpreted that provision to displace a court's traditional equitable authority to preserve the status quo pending the resolution of the merits of a matter before it. Based on that interpretation, the court of appeals invalidated the automatic stay provision on separation-of-powers grounds.

The court of appeals' interpretation of the automatic stay provision is incorrect. That provision does not affect a court's traditional equitable authority to preserve the status quo. Thus, if the party opposing a termination motion can show that a stay of the relief in outstanding decrees would cause irreparable injury, that the termination motion is likely to be defeated, and that the merits of the motion cannot be resolved before the automatic stay takes effect, a court has discretion to suspend the automatic stay and require prison officials

to comply with outstanding court orders until the court resolves the termination motion on the merits. When construed in that way, the automatic stay provision satisfies constitutional separation-of-powers principles.

A. Absent Clear And Unequivocal Language, An Act Of Congress Should Not Be Interpreted To Strip A Court Of Its Traditional Authority To Preserve The Status Quo

1. The Judiciary Act of 1789 conferred on federal courts jurisdiction over "all suits * * * in equity." Ch. 20, 1 Stat. 78. That statute gives federal courts "authority to administer in equity suits the principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery at the time of the separation of the two countries." *Grupo Mexicano de Desarrollo* v. *Alliance Bond Fund, Inc.*, 119 S. Ct. 1961, 1968 (1999).

As one component of that authority, federal courts have always enjoyed the power to issue equitable relief to preserve the status quo pending a resolution of a case that is before them. 11A Charles Alan Wright et al., *Federal Practice and Procedure* § 2943, at 79 (1995); see *id.* §§ 2941, 2948, at 33, 133-134. That traditional authority includes the power to keep an outstanding injunction in place pending the resolution of a motion to dissolve the injunction. *Pennsylvania* v. *The Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421, 436 (1855).

Thus, absent the automatic stay provision, a court presented with a motion to terminate a under the PLRA would have authority to keep the decree in place and thereby preserve the status quo until the court resolves on the merits the question whether the decree should be terminated. The question presented in this

case is whether the automatic stay provision entirely removes that traditional authority in cases in which the merits of a termination motion cannot be resolved before the automatic stay takes effect.

2. The starting point for resolving that question is the firmly established principle that courts retain their traditional equitable authority unless Congress makes its intent to displace that authority absolutely clear. The Court has used several formulations to describe the requisite degree of clarity that is needed before an Act of Congress will be construed to displace traditional equitable authority. It has stated that, "[a]bsent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction." *Califano* v. *Yamasaki*, 442 U.S. 682, 705 (1979). It has said that, "[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied." *Porter* v. *Warner Holding Co.*, 328 U.S. 395, 398 (1946). And it has stated that, when "Congress desire[s] to make * * * an abrupt departure from traditional equity practice," it makes "its desire plain." *Hecht Co.* v. *Bowles*, 321 U.S. 321, 330 (1944).

3. Several decisions of this Court are particularly instructive in illuminating the scope of that clear statement rule. In *Bowles*, the Court addressed whether the Emergency Price Control Act of 1942, ch. 26, 56 Stat. 23, required a court to issue relief once a violation of the Act was proven. The Act provided that, "upon a showing by the Administrator that [a] person has engaged or is about to engage in any * * * acts or practices [in violation of the Act], a permanent or temporary injunction, restraining order, or other order

shall be granted without bond." 56 Stat. 33 (emphasis added). Even though the literal language of the Act appeared to require courts to issue a compliance order in all cases in which a violation was established, the Court rejected that interpretation. 321 U.S. at 328-329. The Court explained that, "if Congress had intended to make such a drastic departure from the traditions of equity practice, an unequivocal statement of its purpose would have been made." *Id.* at 329.

In *Scripps-Howard Radio Corp.* v. *FCC*, 316 U.S. 4 (1942), the Court addressed whether a court of appeals had authority to issue a stay of an administrative order issued under the Communications Act of 1934, pending review of that order. One section of the Act provided for judicial review of certain orders in the district court and expressly authorized the district court to issue a temporary stay of the order under review. A companion section of the Act provided for review of other orders in the court of appeals and did not authorize the court of appeals to issue a stay of the order. *Id.* at 7-8. Although for those orders an ordinary application of the principle of *expressio unius est exclusio alterius* would have supported the conclusion that a court of appeals lacked authority to issue a stay, *id.* at 18 (Douglas, J. dissenting), the Court rejected that interpretation of the Act. The Court stated "that Congress would not, without clearly expressing such a purpose, deprive the Court of Appeals of its customary power to stay orders under review." *Id.* at 11. Since Congress had not explicitly denied the court of appeals authority to issue a stay, the court of appeals retained that historic power. *Id.* at 17.

Finally, in *Honig* v. *Doe*, 484 U.S. 305 (1988), the Court addressed whether a court had authority under the Education of the Handicapped Act to require a

change in a child's educational placement pending the resolution of litigation directed to determining where the child should be placed. The "stay put" provision of the Act specified that "[d]uring the pendency of any proceedings conducted pursuant to [the Act] unless the State or local education agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child." *Id.* at 312. The Court held that the language of the Act was "unequivocal" and precluded a school from expelling a child during the pendency of proceedings without the parent's consent, even if the child was dangerous. *Id.* at 323-324. At the same time, the Court held that the "stay put" provision "in no way purports to limit or preempt the authority conferred on courts [to issue equitable relief]," and that school officials could therefore seek injunctive relief to change the placement of a child in appropriate cases. *Id.* at 327-328. In such proceedings, the Court explained, the "stay put" provision "effectively creates a presumption in favor of the child's current educational placement which school officials can overcome only by showing that maintaining the child in his or her current placement is substantially likely to result in injury either to himself or herself, or to others." *Id.* at 328.

In each of the above cases, the statute at issue could readily have been interpreted to displace traditional equitable authority if ordinary principles of statutory construction had been applied. Because none of the statutes explicitly prohibited courts from exercising traditional equitable authority, however, the Court held that such authority had not been displaced.

B. The Automatic Stay Provision Does Not Preclude A Court From Issuing An Order To Preserve The Status Quo In Appropriate Circumstances

1. The automatic stay provision states that the filing of a motion for termination "shall operate as a stay during the period * * * beginning on the 30th day after such motion is filed * * * and * * * ending on the date the court enters a final order ruling on the motion." 18 U.S.C. 3626(e)(2) (Supp. III 1997). Particularly when read against the background principle that federal courts retain traditional equitable authority "[a]bsent the clearest command to the contrary" (*Yamasaki*, 442 U.S. at 705), that statutory text does not deprive a court of authority to maintain the status quo by suspending the automatic stay and requiring observance of the terms of a decree until the merits of the termination motion can be resolved. Instead, it simply describes what will occur in the absence of judicial intervention. While otherwise disagreeing with our interpretation of the automatic stay provision, Judge Easterbrook described the provision in precisely those terms. He explained that the automatic stay provision "does not tell judges when, how, or what to do, but specifies what happens if the judge does not act." Pet. App. 26a (Easterbrook, J., dissenting from the denial of rehearing en banc).

Thus, if the statutory period passes and the court does not intervene, a stay of the judgment automatically occurs and it remains in effect until the termination motion is decided. Nothing in the language of the automatic stay provision, however, purports to limit the authority of a court to exercise its historic authority to preserve the status quo in those cases in which the termination motion cannot be resolved before the auto-

matic stay takes effect and the traditional standards for the issuance of equitable relief have been satisfied.

The automatic stay provision therefore operates in much the same way as the "stay put" provision at issue in *Honig*. Like the "stay put" provision, the automatic stay provision governs what happens during the pendency of litigation in the absence of judicial intervention. It does not, however, foreclose a court from exercising the traditional equitable authority it otherwise possesses.

The court of appeals interpreted the automatic stay provision to foreclose the exercise of equitable authority because the statutory text describes the stay as "automatic," states that the stay "shall" take effect, and specifies when the stay begins and ends. Pet. App. 12a. Those features of the statute, however, are perfectly consistent with the statute establishing what will happen in the absence of judicial intervention; they do not demonstrate that Congress took the extraordinary step of eliminating a court's historic authority to preserve the status quo. The "stay put" provision at issue in *Honig* took effect automatically, used the term "shall" and specified a starting point and ending point. 484 U.S. at 312. And the judicial relief provision at issue in *Bowles* used the term "shall." 321 U.S. at 326. The Court nonetheless concluded in both cases that the statutes at issue did not displace a court's traditional equitable authority. The same conclusion is warranted here.

2. The power to issue equitable relief to maintain the status quo does not imply the authority to do so in any and all circumstances. The automatic stay provision effectively creates a presumption in favor of changing the status quo by staying the judgment at the point at which the automatic stay is scheduled to take effect,

and requires those seeking to preserve the status quo to satisfy the traditional standards for obtaining equitable relief. Cf. *Honig*, 484 U.S. at 328 ("stay put" provision "effectively creates a presumption" in favor of the child's current placement which school officials must overcome).

The "traditional standard" for granting an injunction preserving the status quo until the merits of a case can be resolved requires the party seeking such relief "to show that in the absence of its issuance he will suffer irreparable injury and also that he is likely to prevail on the merits." *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 931 (1975). In deciding whether to grant such relief, the court also weighs the harm to others and the public interest. *Yakus* v. *United States*, 321 U.S. 414, 440 (1944). A court is also required to exercise its traditional equitable authority in a way that is consistent with the larger policies of the Act. *Bowles*, 321 U.S. at 331. Based on those considerations, a party seeking to avoid the effect of the automatic stay ordinarily must show that (1) a stay of the outstanding orders would cause the party irreparable injury, (2) the termination motion is likely to be defeated, and (3) the merits of the motion cannot be resolved before the automatic stay takes effect. Once such a showing is made, a court has discretion to maintain the status quo by suspending the automatic stay and requiring prison officials to observe the terms of the decree until the merits of a termination motion can be resolved.[3]

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[3] A court applying traditional equitable standards also would have discretion to maintain the status quo when discovery concerning present conditions is necessary to establish the traditional prerequisites for equitable relief and plaintiffs, although diligent, have been prevented from obtaining sufficient discovery because defendants have obstructed those efforts. Other similarly com-

C. Other Provisions Of The Act Show That The Automatic Stay Provision Does Not Foreclose Equitable Relief

Related provisions of the Act also support the conclusion that Congress did not intend to strip a federal court of its authority to maintain the status quo under traditional equitable standards.

1. The provision appearing immediately after the automatic stay provision—the "good cause postponement provision"—specifies that "[t]he court may postpone the effective date of an automatic stay * * * for not more than 60 days for good cause," which does not include "general congestion of the court's calendar." 18 U.S.C. 3626(e)(3). If Congress had intended for the automatic stay provision to block judicial intervention under traditional equitable standards, Congress could easily have added another sentence to the good cause postponement provision stating that:

> Except as provided herein, a court shall have no authority to stay, suspend, delay, or bar the operation of the automatic stay.

The absence of such an express restriction confirms that the automatic stay provision does not displace judicial authority to preserve the status quo in accordance with traditional equitable standards when the merits of a termination motion cannot be resolved before the automatic stay takes effect.

Nor does the grant of authority to postpone the automatic stay under a *good cause* standard for no more than 60 days imply that a court lacks authority to suspend the automatic stay under *traditional equitable*

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pelling equitable circumstances would also justify a suspension of the automatic stay to maintain the status quo.

standards for a longer period of time. Under the statutory good cause standard, any factor affecting a court's ability to resolve the merits of a termination motion within 30 days, other than general docket congestion, could justify a postponement of up to 60 days. Thus, a counsel's scheduling conflict, the unavailability of a witness, a general need for discovery, or a court's prior involvement in another pressing matter could all serve as a basis for a statutory postponement order. Compare Fed. R. Civ. P. 6(b) (authorizing a court to extend the deadlines imposed by the Rules "for cause shown"); 4A Charles Alan Wright et al., *supra*, § 1165, at 475 (a party must demonstrate some justification for an extension of a deadline, but an application for an extension under Rule 6 will normally be granted absent bad faith or prejudice to the adverse party). In contrast, in order to obtain a suspension of the automatic stay under traditional equitable standards, a party ordinarily must show not only that the merits of the termination motion cannot be resolved before the automatic stay takes effect, but also that a stay of the court's orders would cause the party irreparable injury and that the party is likely to defeat the termination motion. *Doran*, 422 U.S. at 931.

Congress's unwillingness to permit a postponement of the automatic stay under a generous good cause standard for more than 60 days does not imply that Congress foreclosed a court from suspending the automatic stay when justified under the far more demanding standards for obtaining equitable relief. To the contrary, the fact that Congress has limited judicial authority in one respect implies that the court remains free to exercise the traditional authority that has not been restricted.

2. Significantly, Congress also provided for appellate review of orders "staying, suspending, delaying, or barring the operation of the automatic stay" (other than an order postponing the automatic stay under the 60-day postponement provision). 18 U.S.C. 3626(e)(4) (Supp. III 1997). Such orders "shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28." *Ibid.*

That appellate review provision further supports the conclusion that Congress did not intend to displace a court's authority to preserve the status quo under traditional equitable standards. As one court of appeals has explained, it is unlikely that Congress would have provided for appellate review of orders suspending the automatic stay "if the courts did not have the authority to issue such orders." *Hadix* v. *Johnson*, 144 F.3d 925, 938 (6th Cir. 1998). Thus, the most likely explanation for the appellate review provision is that "Congress understood that there would be some cases in which a conscientious district court acting in good faith would perceive that equity required that it suspend the (e)(2) thirty-day stay and Congress therefore permitted the district court to do so, subject to appellate review." *Ruiz* v. *Johnson*, 178 F.3d 385, 394 (5th Cir. 1999).

Congress's failure to provide any standard for review of orders suspending the automatic stay lends additional weight to that conclusion. An appellate court ordinarily reviews an order affording equitable relief by determining whether the district court abused its discretion in its application of the traditional equitable factors. *Doran*, 422 U.S. at 931-932. Congress's failure to specify a different standard for review of orders suspending the automatic stay suggests that Congress intended for that traditional standard to be applied.

The alternative explanation for the appellate review provision—that it facilitates prompt reversal of all orders suspending the automatic stay—is unpersuasive. If that were Congress's intent, it could have provided for appellate correction through mandamus, which is the procedure that has traditionally been used "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Roche* v. *Evaporated Milk Ass'n*, 319 U.S. 21, 26 (1943). Congress manifested its awareness of the distinction between review by appeal and review by mandamus in the PLRA itself. At the same time that Congress provided for an *appeal* of an order suspending the automatic stay, it also provided for review by *mandamus* of a court's failure to perform its duty to issue a prompt ruling on a motion for termination. 18 U.S.C. 3626(e)(1) (Supp. III 1997). Thus, the appellate review provision reflects a recognition that a district court has authority to suspend the automatic stay under traditional equitable standards, and gives prison officials a right to an appellate determination on whether such an order conforms to those standards.[4]

[4] The court of appeals concluded that Congress may have enacted the appellate review provisions to facilitate appeals from orders invalidating the automatic stay provisions on constitutional grounds. While that may have been one of Congress's purposes, nothing in the text of the Act suggests that facilitating appeals from constitutional rulings was Congress's exclusive purpose.

D. Interpreting The Automatic Stay Provision To Preserve A Court's Equitable Authority Furthers The PLRA's General Purposes And Is Consistent With Congress's General Practice

1. Interpreting the automatic stay provision to preserve a court's authority to maintain the status quo under traditional equitable standards is also consistent with the delicate balance that Congress sought to strike when it enacted the PLRA. The predecessor to the bill that ultimately became law provided that "in any civil action with respect to prison conditions, a defendant or intervenor shall be entitled to the immediate termination of any prospective relief, if the relief was approved or granted in the absence of a finding by the court that prison conditions violated a federal right." H.R. 667, 104th Cong., 1st Sess. § 301(b) (1995); H.R. Rep. No. 21, 104th Cong., 1st Sess. 25-26 (1995). That bill did not require any analysis of whether the relief was in fact necessary to remedy a violation of a federal right. *Ibid.*

The bill Congress enacted contains a provision that is similar to the predecessor bill. That provision requires termination of any decree "approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. 3626(b)(2) (Supp. III 1997). Unlike the predecessor bill, however, the bill Congress enacted contains an important qualification. It provides that "[p]rospective relief shall not be terminated if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the

violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation." 18 U.S.C. 3626(b)(3) (Supp. III 1997).

That change is significant. In the bill it enacted, Congress sought to balance two objectives. It sought to facilitate the *prompt* termination of relief that is *not* necessary to remedy a violation of a federal right. At the same time, however, it also sought to prevent *premature* termination of relief that *is* necessary to remedy a violation of a federal right. Those dual purposes are best accommodated when a court has authority to preserve the status quo beyond 90 days in the cases in which those opposing the termination motion can show that a stay of relief will cause irreparable injury, the termination motion is likely to be defeated, and the termination motion cannot be resolved on the merits before the automatic stay takes effect.

That is particularly true in light of the standard Congress established for deciding whether prospective relief should be terminated—whether the relief remains necessary to remedy a violation of a federal right. That inquiry necessarily requires a court to assess the current conditions of facilities that it may not have examined for years. When the relief applies to a single institution, it may be possible to resolve the merits of the motion before the automatic stay becomes effective. But when the relief affects all or most state institutions, as it does in several States, it may be unrealistic to expect that the inquiry can be completed before the automatic stay takes effect. It would frustrate Congress's intent to avoid premature termination of relief that is necessary to remedy a violation of federal law to read into the automatic stay provision an

unstated intent to displace entirely a court's historic authority to maintain the status quo in those cases.

Nor does recognition of such authority undermine Congress's purpose of ensuring prompt termination of relief that is not necessary to remedy a violation of a federal right. In those cases in which a district court suspends the automatic stay without adequate justification, prison officials may obtain appellate review of that decision under 18 U.S.C. 3626(e)(4) (Supp. III 1997). And in those cases in which the district court's suspension of the stay is justified, but the district court fails to decide the merits of the termination motion with "reasonable promptness," prison officials may obtain a writ of mandamus to compel a prompt determination. 18 U.S.C. 3626(e)(1) (Supp. III 1997).[5]

2. Congress has a long tradition of respecting the authority of courts to exercise traditional equitable authority to preserve the status quo. Congress has rarely stripped courts of that authority, and when it has done so, it has done so in unmistakable terms. For example, the statute at issue in *Yakus*, 321 U.S. at 437-443, expressly provided that "the court shall have the

[5] The limited legislative history of the automatic stay provision is largely unilluminating on the question presented in this case. That history suggests that the automatic stay provision was intended to encourage district courts to rule promptly on motions for termination. 143 Cong. Rec. S12,268 (daily ed. Nov. 9, 1997) (statement of Sen. Abraham) (amended automatic stay provision); H.R. Rep. No. 21, 104th Cong., 1st Sess. 26 (1995) (original provision); 104 Cong. Rec. H1562 (daily ed. Feb. 10, 1995) (statement of Rep. Canady) (same). Nothing in the legislative history suggests that Congress intended to displace a court's historic authority to maintain the status quo in those cases in which a motion for termination could not be resolved before the automatic stay was scheduled to take effect and plaintiff was able to establish the traditional prerequisites for equitable relief.

powers of a district court with respect to the jurisdiction conferred on it by this Act; except that the court shall not have power to issue any temporary restraining order or interlocutory decree staying or restraining, in whole or in part, the effectiveness of any regulation or order" issued under the Act. Emergency Price Control Act of 1942, ch. 26, § 204(c), 56 Stat. 32.

That statute demonstrates that when Congress wants to displace a court's traditional equitable authority to maintain the status quo, it knows how to select language that is suitable to the task. Congress did not enact such language here. Under the exacting standards established by this Court, and given the absence of language comparable to that used in the statute at issue in *Yakus*, the automatic stay provision should not be interpreted to displace a court's authority to issue equitable relief to maintain the status quo. See *Scripps-Howard Radio*, 316 U.S. at 17 ("Where Congress wished to deprive the courts of this historic power [to maintain the status quo pending appeal], it knew how to use apt words—only once has it done so and in a statute born of the exigencies of war.").

E. Interpreting The Automatic Stay Provision To Permit A Court To Maintain The Status Quo Under Traditional Equitable Standards Avoids A Serious Constitutional Question

1. In *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), the Court invalidated an Act of Congress that required federal courts to reopen certain cases that were dismissed as time-barred if the cases would have been timely filed under a somewhat longer statute of limitations. The Court held that Congress lacks authority under the Constitution to enact retroactive legislation that commands a federal court to reopen a final

judgment no longer subject to appellate review. *Id.* at 218-219, 240. The Court explained that Article III "gives the Federal Judiciary the power, not merely to rule on cases, but to decide them, subject to review only by superior courts in the Article III hierarchy." *Id.* at 218-219 (emphasis omitted).

In *Plaut*, the Court also identified a related principle derived from *Hayburn's Case*, 2 U.S. (2 Dall.) 409 (1792), "that Congress cannot vest review of the decisions of Article III courts in officials of the Executive Branch." 514 U.S. at 218. The Court indicated that the same underlying principle also precludes Congress from reviewing the decisions of Article III courts. The Court quoted with approval Judge Iredell's statement in *Hayburn's Case*, 2 U.S. (2 Dall.) at 413, that "no decision of any court of the United States can, under any circumstances, . . . be liable to a revision, *or even suspension*, by the Legislature itself, in whom no judicial power of any kind appears to be vested." *Plaut*, 514 U.S. at 226 (emphasis added).[6]

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[6] *Hayburn's Case* involved the administration of a pension statute for disabled Revolutionary War veterans. Act of Mar. 23, 1792, ch. 11, 1 Stat. 243. Under that statute, circuit courts were directed to examine pension applicants to determine the nature and degree of their disability and to "transmit the result of their inquiry" to the Secretary of War, if "in their opinion, the applicant should be put on the pension list." 1 Stat. 244. The Secretary of War, in turn, was authorized to "withhold the name of such applicant from the pension list, and make report * * * to Congress," in any case in which he had "cause to suspect imposition or mistake." *Ibid.* *Hayburn's Case* became moot before this Court had occasion to address the constitutionality of the pension statute. See 2 U.S. (2 Dall.) at 409-410. Act of Feb. 28, 1798, ch. 17, 1 Stat. 324 (repealing challenged provision). In their capacity as circuit justices, however, five of the six Justices of this Court expressed the view that the statute was unconstitutional. The views of those Justices, which are collected in the report of *Hayburn's Case*, 2 U.S. (2 Dal.) at 410-414, "have since been taken to reflect a proper understanding of the role of the Judiciary under the Constitution." *Morrison* v. *Olsen*, 487 U.S. 654, 678 n.15 (1988).

A constitutional question arises under *Plaut* and *Hayburn's Case*, when prison officials file a motion to terminate a decree entered before the effective date of the PLRA, and there is insufficient time for a court to resolve the merits of the motion before the automatic stay takes effect. If the automatic stay provision were interpreted to displace a court's traditional authority to maintain the status quo in such cases, it would resemble a direct legislative suspension of a final judgment of an Article III court. Like a direct legislative suspension, it would legislatively effect the suspension of a final judgment without affording a court any role in the suspension decision. And it would do so even though the relief in the decree may remain necessary to remedy a violation of federal law. There is a serious constitutional question under *Plaut* and *Hayburn's Case* whether such legislation would encroach on the judicial function in violation of Article III.

In contrast, if the automatic stay is interpreted to permit a court to maintain the status quo under traditional equitable standards, the court retains control over whether its judgment should be suspended. As two courts of appeals have held, and the court of appeals in this case acknowledged, that interpretation thereby avoids any serious Article III question. *Ruiz*, 178 F.3d at 395; *Hadix*, 144 F.3d at 937; Pet App. 11a n.1; see *Plaut*, 514 U.S. at 231-232 (a legislative waiver of the res judicata effect of a final judgment does not raise a separation-of-powers concern when "[w]aiver [is] subject to the control of the courts themselves").

Interpreting the automatic stay provision to preserve such authority is therefore supported by the principle that a statute should be interpreted to avoid "serious constitutional problems," unless such a construction is "plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988); see also *Jones* v. *United States*, 526 U.S. 227, 238-240 (1999); *United States* v. *X-Citement Video, Inc.*, 513 U.S. 64, 78 (1994).

2. We do not suggest that the automatic stay provision would be unconstitutional under *Plaut* and *Hayburn's Case* if construed to foreclose equitable relief, but rather that it would pose a substantial constitutional question not fully answered by existing precedents. Unlike the statute at issue in *Plaut*, the automatic stay provision concerns prospective relief only; and unlike the statute at issue in *Hayburn's Case*, the automatic stay provision does not authorize officers of a nonjudicial branch of government to review judgments in individual cases. Those distinctions, however, do not eliminate entirely the serious constitutional question that would be presented if the automatic stay provision were construed to foreclose equitable relief, because some of the concerns underlying *Plaut* and *Hayburn's Case* would remain.

a. Unlike the statute at issue in *Plaut*, which reopened claims for money damages, the automatic stay provision affects only prospective relief. 18 U.S.C. 3626(e)(2) (Supp. III 1997). That distinction is potentially significant, because under *Wheeling Bridge*, *supra*, Congress has substantial authority to enact legislation that affects the prospective relief in final judgments.

In *Wheeling Bridge*, the Court affirmed a judgment ordering a bridge to be removed, because the bridge

was too low for passing ships and therefore constituted a public nuisance. Congress then enacted a statute declaring the bridge a "lawful structure" and a "post road." The Court held that Congress did not have authority to alter the judgment to the extent that it awarded costs to the plaintiff. 59 U.S. (18 How.) at 431. The Court reached a different conclusion, however, with respect to the part of the judgment that required the bridge to be removed:

> But that part of the decree, directing the abatement of the obstruction, is executory, a continuing decree, which requires not only the removal of the bridge, but enjoins the defendants against any reconstruction or continuance. Now, whether it is a future existing or continuing obstruction depends upon the question whether or not it interferes with the right of navigation. If, in the mean time, since the decree, this right has been modified by the competent authority, so that the bridge is no longer an unlawful obstruction, it is quite plain the decree of the court cannot be enforced.

Id. at 431-432. In *Plaut*, the Court reaffirmed *Wheeling Bridge*, stating that it had established that Congress may enact legislation that "alter[s] the prospective effect of injunctions entered by Article III courts." 514 U.S. at 232.

Wheeling Bridge, however, does not eliminate the serious constitutional question that would be presented if the automatic stay provision were interpreted to displace a court's traditional equitable authority. The legislation at issue in *Wheeling Bridge* did not purport to dissolve the injunction to remove the bridge by operation of law, but instead established a new legal regime under which the *Court* dissolved the injunction

after deciding that the injunction was no longer necessary to prevent a violation of federal law.

In that respect, the *Wheeling Bridge* legislation operated like the PLRA's termination provision, which is not at issue in this case. That provision does not purport to terminate a judgment by operation of law. Instead, it requires a court to terminate the prospective relief unless it finds that the relief remains necessary to remedy a violation of federal law. 18 U.S.C. 3626(b)(1), (2), and (3) (Supp. III 1997). As the courts of appeals have uniformly concluded, the termination provision therefore falls comfortably within Congress's authority under *Wheeling Bridge*, *supra*, to affect prospective relief. See *Berwanger* v. *Cottey*, 178 F.3d 834 (7th Cir. 1999); *Nichols* v. *Hopper*, 173 F.3d 820 (11th Cir. 1999); *Benjamin* v. *Kerik*, 172 F.3d 144 (2d Cir.) (en banc), cert. denied, 120 S. Ct. 72 (1999); *Imprisoned Citizens Union* v. *Ridge*, 169 F.3d 178 (3d Cir. 1999); *Hadix* v. *Johnson*, 133 F.3d 940 (6th Cir.), cert. denied, 118 S. Ct. 2368 (1998); *Inmates of Suffolk County Jail* v. *Rouse*, 129 F.3d 649 (1st Cir. 1997), cert. denied, 118 S. Ct. 2366 (1998); *Dougan* v. *Singletary*, 129 F.3d 1424 (11th Cir. 1997), cert. denied, 118 S. Ct. 2375 (1998); *Gavin* v. *Branstad*, 122 F.3d 1081 (8th Cir. 1997), cert. denied, 118 S. Ct. 2374 (1998); *Plyler* v. *Moore*, 100 F.3d 365 (4th Cir. 1996), cert. denied, 520 U.S. 1277 (1997).

The automatic stay provision, by contrast—if interpreted to foreclose equitable relief—would operate differently from the legislation at issue in *Wheeling Bridge* and the termination provision. Unlike those provisions, it would effect a suspension of the final judgment by operation of law, rather than through a judicial act, and it would do so even though the relief in the decree may remain necessary to remedy a violation of federal law. Thus, notwithstanding *Wheeling Bridge*,

that interpretation would raise a serious Article III question concerning the extent of Congress's power to interfere with the final judgments of Article III courts. See Brian M. Hoffstadt, *Retaking the Field: The Constitutional Constraints On Federal Legislation That Displaces Consent Decrees*, 77 Wash. U. L.Q. 53, 90 (1999) (Congress has authority under *Wheeling Bridge* to modify the law and require courts to modify decrees to the extent that they are inconsistent with the new law, "[b]ut when Congress declares an outstanding decree null and void, it may cross the line of permissible activity by negating a judicial order and encroaching upon the prerogative of the Judiciary to render dispositive judgments").

b. The statute at issue in *Hayburn's Case* provided that circuit courts would decide pension claims, and that the Secretary of War would then review the decisions and withhold relief when he suspected that the court had erred in its determination. Act of Mar. 23, 1972, ch. 11, 1 Stat. 244. The automatic stay provision does not authorize either Congress or the Executive branch to review judgments in particular prison conditions cases in order to determine whether the court erred in rendering its judgments.

That distinction, however, does not fully answer the separation-of-powers concern that would be raised if the automatic stay provision were interpreted to displace traditional equitable authority. The critical point, for separation of powers purposes, is that, in a certain class of cases, the automatic stay provision would still legislatively effect a suspension of a final judgment without affording a court any role in that decision. And it would do so even though the relief may be necessary to remedy a violation of federal law. Such a statute sufficiently resembles a direct legislative

suspension of a final judgment to raise serious Article III concerns.

3. We do not suggest that legislative interference with equitable authority necessarily and in all cases raises constitutional concerns. It is well established that Congress "may intervene and guide *or control* the exercise of the court's discretion." *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305, 313 (1982) (emphasis added). For example, in *Yakus*, the Court upheld legislation providing that a court could not enter a temporary restraining order or a preliminary injunction in a certain class of cases. 321 U.S. at 441-442. And in *TVA* v. *Hill*, 437 U.S. 153, 193-195 (1978), the Court held that Congress had authority to require a court to enjoin projects that threaten an endangered species. See *Romero-Barcelo*, 456 U.S. at 313-314 (reaffirming *Hill*). But neither of those cases raised the problem of legislative interference with a final judgment that is no longer subject to appeal. Moreover, in both of those cases Congress mandated that a court either exercise or refrain from exercising its discretion in a particular way. In neither case did Congress attempt to bypass the judiciary by mandating a particular result by operation of law. Accordingly, those cases do not fully answer the constitutional question that would be raised if the automatic stay provision were interpreted to displace a court's traditional equitable authority.

4. The statutes discussed by the State in its petition (Pet. 13-14) and by Judge Easterbrook in his dissent from the denial of rehearing en banc (Pet. App. 31a-35a) do not pose the same constitutional problem.

a. For example, while the automatic stay in bankruptcy goes into effect upon the filing of a bankruptcy petition, 11 U.S.C. 362(a)(1), a court immediately has broad authority to "terminat[e], annul[], modify[], or

condition[] such stay." 11 U.S.C. 362(d). Because the automatic stay in bankruptcy is subject to judicial control, it does not raise the Article III question that would be presented if the PLRA automatic stay were interpreted to foreclose equitable relief. See *Plaut*, 514 U.S. at 231-232.

In addition, since the time that Congress first exercised its plenary authority under the Bankruptcy Clause to provide "uniform Laws on the subject of Bankruptcies throughout the United States," U.S. Const. Art. I, § 8, the judgments that have been issued by Article III courts have been qualified by that system of laws. That feature of bankruptcy law has significant Article III consequences. As the Court explained in *Plaut*:

> The finality that a court can pronounce is no more than what the law in existence at the time of judgment will permit it to pronounce. If the law then applicable says that the judgment may be reopened for certain reasons, that limitation is built into the judgment itself, and its finality is so conditioned.

514 U.S. at 234. By contrast, the PLRA stay provision does not simply build certain limitations into future judgments; it imposes such limitations on previously existing decrees.

b. The 10-day limit on temporary restraining orders set forth in Federal Rule of Civil Procedure 65(b) similarly does not raise the Article III question presented here. Rule 65 does not purport to suspend final judgments of Article III courts by operation of law; the 10-day limit on temporary restraining orders is built into the orders that a court issues; and a court retains authority to preserve the status quo by issuing a

preliminary injunction once the 10-day period expires. See Fed. R. Civ. P. 65(b).

c. The requirement in the Speedy Trial Act of 1974, 18 U.S.C. 3162(a)(2), that an indictment must be dismissed if the defendant is not tried within the statutory period similarly does not raise Article III concerns. A failure to try a defendant within the statutory period results in the dismissal of an indictment, not in the suspension of a judgment. *Ibid.* The dismissal of the indictment requires a judicial act; it does not occur by operation of law. *Ibid.* And the court retains broad authority to extend the applicable period and to dismiss without prejudice. 18 U.S.C. 3161(h), 3162(a)(2).

d. The 30-day expedited review provision for appeals by persons incarcerated for contempt of a grand jury, 28 U.S.C. 1826(b), likewise does not pose Article III concerns. That provision applies to judgments that are subject to appeal. Such legislation does not raise the same Article III problems as legislation affecting judgments that are no longer subject to appeal. *Plaut*, 514 U.S. at 226-227. Section 1826(b), moreover, simply specifies a time limit for a decision; it does not specify a consequence for a court's failure to meet the deadline. A court is therefore free to decide what effect, if any, a failure to meet the statutory deadline will have on the court's judgment.

e. The various other statutes that set forth time limits on judicial decisionmaking are also inapposite here. Pet. App. 33a-35a (Easterbrook, J., dissenting from the denial of rehearing en banc) (discussing the relevant statutes). The constitutional problem with interpreting the automatic stay provision to foreclose equitable relief is not that it would require a court to make a decision on the merits of a termination motion within a specified time period. The problem is that, if

the court does not make a decision on the merits within a specified period, relief in a final judgment that may be necessary to remedy a violation of federal law would be suspended by operation of law. None of the time limit statutes raise that constitutional problem.

5. If the Court concludes that it is necessary to decide the difficult constitutional question presented if the automatic stay provision is construed to foreclose a court's authority to issue equitable relief, we believe that, on balance, Congress's broad authority to affect prospective relief, *Wheeling Bridge*, *supra*, its general power to control the exercise of equitable discretion, *Romeo-Barcelo*, *supra*, and the 90-day window for judicial action on the merits before the automatic stay takes effect would be sufficient to sustain its constitutionality. That construction of the automatic stay provision, however, would raise serious Article III concerns that are not presented when the automatic stay provision is interpreted to permit the exercise of traditional equitable authority. Since the automatic stay provision can fairly be interpreted to permit a court to suspend the automatic stay and thereby preserve the status quo in accordance with traditional equitable standards, the court of appeals erred in failing to adopt that interpretation.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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